

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF WISCONSIN

SYDNI BRIGGS
(by her guardian Keli Wendt),

Plaintiff,

v.

Case No. 17-CV-62

ANDREW YORDE, STACEY DAIGLE,
JAMES LARKIN, TONI MOORE,
MARK SKOLASKI, DARRELL STETZER,
DR. GABRIELLA HANGIANDREOU,
CASSANDRA JENNINGS, ED WALL,
JOHN OURADA, WENDY PETERSON,
PAUL WESTERHAUS and THE MEDICAL
COLLEGE OF WISCONSIN, INC. and
WISCONSIN INJURED PATIENTS
COMPENSATION FUND,

Defendants.

**DEFENDANTS ANDREW YORDE, STACEY DAIGLE,
JAMES LARKIN, TONI MOORE, MARK SKOLASKI,
DARRELL STETZER, CASSANDRA JENNINGS, ED WALL,
JOHN OURADA, WENDY PETERSON and
PAUL WESTERHAUS' BRIEF IN RESPONSE
TO INJURED PATIENTS AND FAMILIES COMPENSATION FUND'S
MOTION FOR SUMMARY JUDGMENT**

The defendants, Andrew Yorde, Stacey Daigle, James Larkin, Toni Moore, Mark Skolaski, Darrell Stetzer, Cassandra Jennings, Ed Wall, John Ourada, Wendy Peterson, and Paul Westerhaus (collectively "the State defendants"), respectfully submit this Brief in Response to Injured Patients and Families Compensation

Fund's ("the Fund") Brief in Support of Motion for Summary Judgment Motion for Summary Judgment.

While the State defendants do not take a position on the merits of the Fund's motion, they request that the Court deem the Fund's motion premature under Fed. R. Civ. P. 56(d), defer ruling on the Fund's motion, and allow for a response brief, if any, to be filed on March 23, 2018. Rule 56(d) states in relevant part:

If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order.

Fed. R. Civ. P. 56(d).

In this case, the Fund has moved for summary judgment by adopting the summary judgment arguments of Dr. Hangiandreou and The Medical College of Wisconsin ("MCW"), and also arguing that under Wis. Stat. § 655.27(1) the Fund is not liable because "the plaintiff has failed to establish a *prima facie* case against Dr. Hangiandreou." *See* (Dkt. 41, The Fund's Br. Supp. Mot. Summ. J. at 2.) However, Dr. Hangiandreou has not yet been deposed in this matter and discovery remains open through the dispositive motion deadline of March 30, 2018. (Dkt. 26, Prelim. Pretrial Conf. Order ¶¶ 3–4); (Dkt. 43, Hall Decl. ¶ 2.) If the plaintiff does not depose Dr. Hangiandreou, the State defendants might, as her testimony is necessary to determining whether and how the State defendants will respond to Dr. Hangiandreou's motion relating to the deliberate indifference claim. *See* (Hall Dec.

¶ 3.) In order to evaluate whether Dr. Hangiandreou was deliberately indifferent, the parties must consider what Dr. Hangiandreou knew at the times relevant to this case and the reasoning behind her decisions related to the plaintiff. *See, e.g., Halloway v. Delaware County Sheriff*, 700 F.3d 1063, 1073 (7th Cir. 2012).

Moreover, while the Fund argues (by adopting the brief of Dr. Hangiandreou and MCW) that the plaintiff has not named any expert critical of Dr. Hangiandreou in this case, the State defendants have until March 23, 2018, to disclose their experts and expert reports, (Dkt. 26, Prelim. Pretrial Conf. Order ¶ 2), leaving open the possibility that another expert might express an opinion about Dr. Hangiandreou's treatment of the plaintiff in this case. Whether or not an expert retained by the State defendants provides an opinion related to Dr. Hangiandreou's treatment, MCW's arguments relating to a lack of expert testimony are premature until all experts have been named and reports traded.

Accordingly, the Court should defer ruling on the Fund's motion and allow for a response brief, if any, to be filed on March 23, 2018. .

CONCLUSION

For all of the reasons above, the defendants, Andrew Yorde, Stacey Daigle, James Larkin, Toni Moore, Mark Skolaski, Darrell Stetzer, Cassandra Jennings, Ed Wall, John Ourada, Wendy Peterson, and Paul Westerhaus, respectfully request that this Court defer ruling on Injured Patients and Families Compensation Fund's motion for summary judgment and allow for a response brief, if any, to be filed on March 23, 2018.

Dated this 23rd day of January, 2018.

CRIVELLO CARLSON, S.C.

Attorneys for Defendants Andrew Yorde,
Stacey Daigle, James Larkin, Toni Moore, Mark
Skolaski, Darrell Stetzer, Cassandra Jennings,
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s/Electronically signed by Linda M. Brent